

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

CONCERNED CITIZENS FOR A)	CV. NO. 09-01409 DAE
SAFE COMMUNITY; DONNA)	
COX; ANTHONY COX; DAVID)	
CARROLL; and NANCY LORD,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
OFFICE OF FEDERAL)	
DETENTION TRUSTEE ,)	
)	
Defendant.)	
_____)	

ORDER GRANTING DEFENDANT'S MOTION FOR LEAVE TO FILE
SURREPLY IN SUPPORT OF ITS OPPOSITION TO PLAINTIFFS' MOTION
TO SUPPLEMENT THE RECORD

Pursuant to Local Rule 78-2, the Court finds this matter suitable for disposition without a hearing. After reviewing Defendant's motion and the supporting and opposing memoranda, the Court **GRANTS** Defendant's Motion for Leave to File a Surreply in Support of its Opposition to Plaintiffs' Motion to Supplement the Record. (Doc. # 108.)

On March 11, 2011, Plaintiffs filed a Motion to Supplement the Record. (Doc. # 105.) Plaintiffs seek to enter the following three exhibits into the administrative record: (1) Affidavit of Alfred Balloqui dated October 23, 2009, (2)

Affidavit of Paula Glidden dated October 23, 2009, and (3) Transcript of deposition testimony of Paula Glidden in Kukin v. Town of Pahrump, Case No. 2:09-cv-02261.¹ (Id. at 1–2.) The two affidavits were attached to Plaintiffs’ Motion but the deposition transcript was not produced until Plaintiffs’ filed their Reply. (See Docs. ## 105-2, 105-3, 107-1.) Notably, Plaintiffs’ Motion did not cite to, or otherwise address, the legal standard for supplementing an administrative record.

On March 24, 2011, Defendant filed an Opposition to Plaintiffs’ Motion, asserting that the Motion should be denied because Plaintiffs failed to meet the legal standard for supplementing an administrative record for purposes of reviewing an agency decision. (Doc. # 106.) Specifically, Defendant argued that Plaintiffs failed to establish that the administrative record is incomplete or that any one of the four exceptions to the administrative record review doctrine applies. (Id. at 2.)

On March 30, 2011, Plaintiffs filed a Reply in Support of its Motion. (Doc. # 107.) In its Reply brief, Plaintiffs addressed for the first time the legal standard for supplementing an administrative record. (Id. at 4–7.) Plaintiffs

¹Plaintiffs initially sought to admit a fourth exhibit containing a form letter. However, Plaintiffs subsequently withdrew their motion with respect to that exhibit because the letter is already a part of the administrative record.

specifically argued that three out of the four exceptions to the administrative record review doctrine, including the exception for bad faith or improper behavior by the agency, applies to the case at bar. (Id. at 5.) Plaintiffs also relied heavily on a case that was not cited in Plaintiffs' Motion. (Id. at 6–7.) Additionally, Plaintiffs attached to their Reply the transcript of Paula Glidden that had become available since the filing of their Motion. (Doc. # 107-1.)

On April 6, 2011, Defendant filed the instant Motion for Leave to file a Surreply to respond to the new issues raised by Plaintiffs for the first time in their Reply. (Doc. # 108.) On April 16, 2011, Plaintiffs filed an Opposition to Defendant's Motion. (Doc. # 109.)

In light of the new arguments, case law, and exhibit set forth in Plaintiffs' Reply in Support of their Motion to Supplement the Record, the Court concludes that good cause exists to allow Defendant to file a Surreply. See Heffelfinger v. Electronic Data Systems Corp., 580 F. Supp. 2d 933, 966 n.116 (C.D. Cal. 2008) (stating that the Court's exercise of discretion in favor of allowing a surreply is appropriate where the movant raises new arguments in its reply brief).

Accordingly, Court **GRANTS** Defendant's Motion for Leave to File a Surreply in Support of its Opposition to Plaintiffs' Motion to Supplement the

Record. (Doc. # 108.) Defendant shall have seven (7) days from the filing of this Order to File its Surreply.

IT IS SO ORDERED.

DATED: Las Vegas, Nevada, October 24, 2011.

A handwritten signature in black ink, appearing to read 'DAVID ALAN EZRA', with a long horizontal flourish extending to the right.

DAVID ALAN EZRA
UNITED STATES DISTRICT JUDGE

Concerned Citizens For A Safe Community, et al., v. Office of Federal Detention Trustee, CV No. 09-01409; ORDER GRANTING DEFENDANT'S MOTION FOR LEAVE TO FILE SURREPLY IN SUPPORT OF ITS OPPOSITION TO PLAINTIFFS' MOTION TO SUPPLEMENT THE RECORD